

# HOUSE BILL No. 1937

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-34-1-5; IC 35-38-2-2.2; IC 35-50-2-15.

**Synopsis:** Lifetime probation. Requires lifetime probation for certain repeat sex offenders. Provides a deadline for filing a request for lifetime probation. Prohibits a court from giving written approval for a sex offender to reside within 1,000 feet of school property.

**Effective:** July 1, 2003.

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January 23, 2003, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## HOUSE BILL No. 1937

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 35-34-1-5 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) An indictment or  
3       information which charges the commission of an offense may not be  
4       dismissed but may be amended on motion by the prosecuting attorney  
5       at any time because of any immaterial defect, including:

- 6       (1) any miswriting, misspelling, or grammatical error;
- 7       (2) any misjoinder of parties defendant or offenses charged;
- 8       (3) the presence of any unnecessary repugnant allegation;
- 9       (4) the failure to negate any exception, excuse, or provision
- 10      contained in the statute defining the offense;
- 11      (5) the use of alternative or disjunctive allegations as to the acts,
- 12      means, intents, or results charged;
- 13      (6) any mistake in the name of the court or county in the title of
- 14      the action, or the statutory provision alleged to have been
- 15      violated;
- 16      (7) the failure to state the time or place at which the offense was
- 17      committed where the time or place is not of the essence of the



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offense;

(8) the failure to state an amount of value or price of any matter where that value or price is not of the essence of the offense; or

(9) any other defect which does not prejudice the substantial rights of the defendant.

(b) The indictment or information may be amended in matters of substance or form, and the names of material witnesses may be added by the prosecuting attorney upon giving written notice to the defendant at any time up to:

(1) thirty (30) days if the defendant is charged with a felony; or

(2) fifteen (15) days if the defendant is charged only with one (1) or more misdemeanors;

before the omnibus date. When the information or indictment is amended, it shall be signed by the prosecuting attorney.

(c) Upon motion of the prosecuting attorney, the court may at any time before, during, or after the trial permit an amendment to the indictment or information in respect to any defect, imperfection, or omission in form which does not prejudice the substantial rights of the defendant.

(d) Before amendment of any indictment or information other than amendment as provided in subsection (b) of this section, the court shall give all parties adequate notice of the intended amendment and an opportunity to be heard. Upon permitting such amendment, the court shall, upon motion by the defendant, order any continuance of the proceedings which may be necessary to accord the defendant adequate opportunity to prepare his defense.

(e) An amendment of an indictment or information to include a:

**(1) habitual offender charge under IC 35-50-2-8; or**

**(2) lifetime probation request under IC 35-50-2-15;**

must be made not later than ten (10) days after the omnibus date. However, upon a showing of good cause, the court may permit the filing of a habitual offender charge at any time before the commencement of the trial.

SECTION 2. IC 35-38-2-2.2, AS AMENDED BY P.L.116-2002, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2.2. **(a)** As a condition of probation for an offender (as defined in IC 5-2-12-4), the court shall:

(1) require the offender to register with the sheriff (or the police chief of a consolidated city) under IC 5-2-12-5; and

(2) prohibit the offender from residing within one thousand (1,000) feet of school property (as defined in IC 35-41-1-24.7) for the period of probation, unless the offender obtains written

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approval from the court.

If the court allows the offender to reside within one thousand (1,000) feet of school property under subdivision (2), the court shall notify each school within one thousand (1,000) feet of the offender's residence of the order.

**(b) A court may not give written approval to allow an offender to reside within one thousand (1,000) feet of school property under subsection (a) if the offender is sentenced to probation for life under IC 35-50-2-15.**

SECTION 3. IC 35-50-2-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 15. (a) The state may seek to have a person placed on probation for life if the person:**

**(1) is charged with a Class A felony or Class B felony under IC 35-42-4 committed against another person less than eighteen (18) years of age; and**

**(2) has a prior unrelated conviction for a Class A felony or Class B felony under IC 35-42-4 committed against another person less than eighteen (18) years of age.**

**(b) The state shall request lifetime probation by alleging the commission of a prior unrelated conviction under subsection (a)(2) on a page separate from the charging instrument.**

**(c) A person has accumulated a prior unrelated felony for purposes of this section only if the offense for which the state seeks to have the person placed on probation for life was committed after sentencing for a prior unrelated felony for a Class A felony or Class B felony under IC 35-42-4 committed against another person less than eighteen (18) years of age. However, a conviction does not count for purposes of this section if it:**

**(1) has been set aside; or**

**(2) is one for which the person has been pardoned.**

**(d) If the person is convicted of a felony described in subsection (a)(1) in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court or judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing.**

**(e) In addition to a sentence imposed under section 4 or 5 of this chapter, a person shall receive a life sentence that is suspended and served on probation if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proven beyond a reasonable doubt that the person has a prior unrelated conviction under subsection (a)(2).**

SECTION 4. [EFFECTIVE JULY 1, 2003] IC 35-50-2-15, as



- 1 added by this act:
- 2 (1) applies to a Class A felony or Class B felony under
- 3 IC 35-42-4 committed against another person less than
- 4 eighteen (18) years of age after June 30, 2003, if the person
- 5 has a prior unrelated conviction for a Class A felony or Class
- 6 B felony under IC 35-42-4 committed against another person
- 7 less than eighteen (18) years of age; and
- 8 (2) does not apply if both offenses described in subdivision (1)
- 9 were committed before July 1, 2003.

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